IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 7858 OF 2003

Kanaiyalal Ghanshyamdas Nathani ..... Petitioner.

versus

State of Maharashtra and ors. ..... Respondents.

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Shri N.R.Bubna with R.S.Apte for the petitioner.
Shri C.R.Sonawane AGP for Respondent no.1.
Shri R.M.Sawant for Respondent no.2.
Shri R.V.More for Respondent no.3.
Shri K.H. Dhuldhwaj for Respondent no.4.

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CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 14TH JANUARY, 2005.

P.C.;

1. The petitioner was elected to the respondent Municipal Corporation on a reserved seat. While he was so holding that post, his caste certificate was invalidated by the competent authority, as a result of which section 10 (1C) operated and the petitioner was deemed to have been vacated the seat because of the disqualification incured.

2. Thereafter the petitioner filed writ petition in this court challenging the invalidation of his

certificate, which was partly allowed and the matter was remitted back to the Caste Verification Committee for fresh decision in accordance with the directions mentioned in the order. The matter is still pending before the Committee. Provisions of section 10(1C) have already operated and a bye-election has taken place and someone else stands elected for that post.

Section 10(1C) reads as under:

> (IC)(a) Notwithstanding anything containmed in sub-section (IB), a Councillor who has been elected to a reserved seat as mentioned in sub section (IB), shall be diawualified for being such Councillor consequent upon the Caste Certificate Verification Committee or any other Competent Authority speciried by the State Government for the purpose of scrutiny fo the Caste Certificate, declaring the Caste Certificate of such Councillor to be invalid and cancelling the same, on the ground of the same having been based on a false claim or declaration made bu such person claiming to be belonging to the reserved category, and thereupon the Councillor shall be deemed to have vacated his office on and from the date of

declaration of such Certificate to be invalid and cancellation of the same by the said Committee or the Competent Authority.

(b) On any person having been disqualified for being a Councillor and consequently, his seat as such Councillor having become vacant under clause (a), the State Government shall, by notification in the Official Gazette, disqualify such operson for being elected or being a Councillor for a period of six years from the date of such order.

3. It will be seen therefore that the automatic disqualification is a mandate to avoid holding of a elected post by a person of a reserved category. He having obtained the certificate which is false and found to be such by the competent authority, that being the basic purpose for enatcment of section 10 (IC) to hold that on such certicate being restored at some later part, or holder of that certificate would be entitled to automatical restoration into the elected post, for that purpose section 10(IC) is enacted. There cannot be a automatic restitution or there cannot be automatic disqualification, unless statutorily so provided, the legislation has in his wisdom provided it

by adding section 10 (IC) to the act, and after the amendment, not provided restitution in the event of subsequent violation of certificate. In such circumstances, we are unable to accept the contention of the learned counsel for the petitioner that there has to be automatically reinstitution or restitution.

4. The second contention raised that the notification holding bye-election specifically states that the result of the bye-election would be subject to the result of the petition then pending. The contention is that since it is subject to the result of the petition pending, and the petition is allowed to restore as a matter of course, must follow. We are unable to accept this submission for the reason that at the most the notification may give the right to the corporation to hold bye-election afresh in view of the violation of certificate, which cannot in law create a right to claim automatic restitution.

5. On both the counts, therefore, the petition fails and it is dismissed. The Caste Scrutiny Committee is directed to decide the matter as early as possible preferably by three months.

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